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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

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KEDRION BIOPHARMA, INC.,
Plaintiff,

18 Civ.

- against -

COMPLAINT

STRATEGIC SHIPPING COMPANY, LTD.,
UNITED AIR LINES, INC., and SCHENKER, INC.,

Defendants.
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Plaintiff, KEDRION BIOPHARMA, INC, by and through its attorneys, Casey & Barnett, LLC, for its Amended Complaint alleges upon information and belief as follows:

1. This action arises out of the Montreal Convention, a Treaty to which the United States is a signatory. The Court has jurisdiction pursuant to 28 USC § 1331.
2. At all material times, KEDRION BIOPHARMA, INC. (hereinafter "KEDRION" or "Plaintiff") was and is a corporation with an office and place of business located at Trostbrücke 1, Hamburg 20457 Germany, and is and was the owner and/or consignee of the consignment of pharmaceuticals which is the subject of this action, as more fully described below.
3. At all material times, Defendant, STRATEGIC SHIPPING COMPANY, LTD., (hereinafter "SSC" or "Defendants"), is a corporation with an office and place of business located at 3 Bethesda Metro Centre, Suite 600, Bethesda, MD 20814 and at all relevant times

was and is doing business as an international freight forwarder of merchandise by air and, directly or through its subsidiaries and/or affiliates, sold Freight Forwarding Services throughout the United States and at all relevant times provided air freight forwarding, warehousing and transportation services to Plaintiff and was and is doing business within the jurisdiction of this Honorable Court.

4. At all material times, Defendant UNITED AIR LINES, INC., (hereinafter “UNITED” or “Defendants”) is a corporation or other business entity with an office and place of business at Bldg. 71, Cargo Area D, Old Rockaway Blvd., Jamaica, NY 11430, and at all relevant times provided air freight forwarding, warehousing and transportation services to Plaintiff and was and is doing business within the jurisdiction of this Honorable Court.

5. At all material times, Defendant SCHENKER, INC. (hereinafter “SCHENKER” or “Defendants”), is a corporation or other business entity with an office and place of business at 150 Albany Avenue, Freeport, NY 11520.

6. Plaintiff brings this action on their own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignment, as their respective interests may ultimately appear, and plaintiffs are entitled to maintain this action.

7. This is a claim for transit delay and excessive temperature damage to a consignment consisting of 6,500-5/packs of RhoGAM syringes from batch RVP2431A (a total of 32,500 syringes) (hereinafter “the Shipment”), which were delivered to the Defendants in good order and condition to be carried from London, Heathrow Airport in the United Kingdom to Memphis International Airport in Memphis, Tennessee, with ultimate delivery to Plaintiff in care of ICS AmerisourceBergen Specialty Group Distribution Center, 420 International Blvd, Suite

500, Brooks, Kentucky 40109, pursuant to UNITED air waybill number 016 01459813 dated October 4, 2016 and contracts between Plaintiff and Defendants with express instructions requiring the shipment be handled, transported, carried and stored at all times at the prescribed temperature range of +2 to +8°C.

8. The Shipment was delivered to Defendants at London Heathrow Airport, United Kingdom, on or about October 4, 2016, for carriage, having been stored at the prescribed temperatures and being in good order and condition, to Memphis International Airport in Memphis, Tennessee, with ultimate delivery to Plaintiff in care of ICS AmerisourceBergen Specialty Group Distribution Center, 420 International Blvd, Suite 500, Brooks, Kentucky 40109 with the express instructions requiring the shipment to be handled, transported, carried and stored at all times at the prescribed temperature range of +2 to +8°C, and was transported by Defendants under an air waybill issued by UNITED numbered 016 01459813 dated October 4, 2016.

9. When the Shipment arrived at its intended destination on or about October 17, 2016, the Defendants were required to ensure prompt clearance with U.S. Customs to ensure timely and prompt delivery to Plaintiff in care of ICS AmerisourceBergen Specialty Group Distribution Center, 420 International Blvd, Suite 500, Brooks, Kentucky 40109 and to further ensure that during the period of temporary storage while awaiting clearance by U.S. Customs the shipment was handled and stored at all times at the prescribed temperature range of +2 to +8°C.

10. When the Shipment was cleared by U.S. Customs and delivered to Plaintiff on or about December 1, 2016, it was determined that the entire Shipment had sustained severe damage due to the fact that the Shipment had been delayed in clearing U.S. Customs and without being stored in the prescribed temperature range of +2 to +8°C during the entire period of

temporary storage awaiting clearance by U.S. Customs and due to improper handling and storage during transportation to and storage in Memphis, Tennessee.

11. The product was determined to be unusable and could not be used for the original intended purpose and was required to be destroyed as a result of the aforementioned improper handling and storage during transportation to and storage in Memphis, Tennessee.

12. The damage to the cargo was not the result of any act or omission on the part of the Plaintiff but, to the contrary, was due solely as a result of the negligence, fault, neglect, breach of contract, and breach of bailment on the part of Defendants and/or their agents, affiliates, sub-contractors, servants and employees.

13. In accordance with the provisions of the Montreal Convention and the underlying contracts between Plaintiff and the Defendants, written notice of the loss was provided Defendants within the time set forth in the Convention and said contracts.

14. By reason of the foregoing, the Plaintiff has been damaged in the amount of \$222,949.80, as nearly as presently can be estimated, no part of which has been paid, although duly demanded.

WHEREFORE, plaintiff respectfully demands judgment in the amount of \$222,949.80, against the Defendants, jointly and severally, together with interest, costs, and disbursements, and such other and further relief as to the Court appears just and proper.

Dated: New York, New York
October 17, 2018
112-35

CASEY & BARNETT, LLC
Attorneys for Plaintiff

By:  _____

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